

**Attachment G**  
**Homeowners' Post-Hearing Opening Brief**

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8  
9 **BEFORE THE COUNTY OF SANTA BARBARA**  
10 **MOBILE HOME RENT CONTROL ORDINANCE**  
11

12 In re: ) **HOMEOWNERS' POST-HEARING**  
13 NOMAD VILLAGE MOBILEHOME PARK, ) **OPENING BRIEF**  
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Hearing Dates: September 19-20, 2011  
Hearing Officer: Stephen Biersmith, Esq.

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15 Petitioners, NOMAD VILLAGE MOBILE HOMEOWNERS (hereinafter "Home  
16 owners"), hereby submit the following post-hearing opening brief and legal points and  
17 authorities in support of their Petition filed herein.  
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19 **I.**

20 **STATEMENT OF FACTS**

21 Nomad Village is a 150-space mobilehome park located in an unincorporated area within  
22 the County of Santa Barbara (hereinafter "the County), and subject to the County of Santa  
23 Barbara Mobile Home Rent Control Ordinance (hereinafter "the Ordinance") found at Chapter  
24 11A of the Santa Barbara County Code of Ordinances. All spaces within the park are covered by  
25 the Ordinance; none are subject to long-term leases which are exempt from rent control. Space  
26 rents in the park range from a low of \$287.00 to a high of \$430.00. The average space rent in the  
27 park is approximately \$315.00, pending the outcome of this Petition. The noticed increase of  
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1 \$161.00 plus 75% of CPI for the last three years will thus result in more than a 50% increase in  
2 rental cost for the average Homeowner, and for some shall be much larger.

3         The park land is owned by a family trust, but is leased to the park operator. For many  
4 years, possibly as many as 50, a ground lease apparently governed this relationship. When that  
5 lease expired in 2008, it was not renewed with the former park operator. The current operator,  
6 Lazy Landing, LLC (hereinafter the "Park Owner"), signed a new 34 year lease effective August  
7 1, 2008, which includes a monthly ground lease amount negotiated at the time of purchase that  
8 calculates rent as a twenty (20%) percent of the gross rental income received by the Park Owner.  
9 Due to the expiration of the prior long-term lease, the County reassessed the local property tax  
10 due to a "change of ownership". Park Owner's Exhibit "G" confirms that notice of the  
11 reassessment was sent by the County and received by the Park Owner on May 26, 2009. County  
12 records indicate that the 2008 Supplemental taxes resulting from the reassessment were paid  
13 (apparently without protest) on December 10, 2009 and January 4, 2010. Testimony during the  
14 hearing confirmed that, to date, no actual assessment appeal has been filed by the Park Owner,  
15 although it is alleged that the Park Owner desires to do this, and can obtain the permission of the  
16 landowner in whose name the appeal would need to be prosecuted. It is undisputed that no  
17 annual rent adjustment, or rent increase of any kind, has been charged to residents since the  
18 current Park Owner assumed operations.

19         On January 26, 2011, Homeowners received a 90-day Notice of rent increase as required  
20 by law. Although it, and its attachments, are not a model of clarity, and tend to mix and match  
21 terms in such a way that it is confusing and difficult to decipher, it is apparent that three distinct  
22 rent amounts are being sought. These are set forth in Park Owner's Exhibit "C" as follows:

- 23         1. A CPI-based increase to existing base rent calculated based upon 75% of the CPI, which

1 Constitutes the annual adjustment which is allowed by the Ordinance without a hearing. A  
2 cumulative total of three years' worth of annual adjustment is included in the notice, since rent  
3 has not been increased for three years. This amount differs for each homeowner, but  
4 approximates \$7-10.00 per month. Homeowners have stipulated at hearing that they are not  
5 challenging this specific portion of the increase.  
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7 2. An additional "permanent increase" to base rent in the amount of \$58.16, which is  
8 derived from alleged increases in property taxes (\$25.59 see Item 1) and ground lease payments  
9 (\$32.57 see Item 2). Homeowners have objected to these amounts.  
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11 3. An additional "temporary increase" which is styled as a 7-year pass through in the  
12 amount of \$102.84, which includes interest at 9%. This amount is based upon four pass through  
13 categories involving alleged capital expenses that are to be amortized over time, and not  
14 considered as ongoing operating expenses; i.e. (numbers taken from Exhibit "C" para.s:  
15 **Capital Improvements** (Item 3)- for various costs already incurred (\$90,000.00) and for costs to  
16 be incurred in the future (\$370,000.00);  
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18 **Uncompensated Increases** (Item 4)- for the increased property taxes billed as a result of the  
19 reassessment and increased land lease costs that were paid for a 33 month period from August,  
20 2008 through April, 2011 (i.e. prior to the effective date of the noticed rent increase) and are now  
21 sought pursuant to a theory described at hearing as "regulatory lag";  
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23 **Anticipated Professional Fees (Property Taxes)** (Item 5)- for estimated legal costs for  
24 pursuing an assessment appeal;

25 **Anticipated Professional Fees (Rent Petition)** (Item 6)- for estimated attorney's and expert  
26 fees to prosecute the instant administrative rent hearing and any forthcoming judicial  
27 proceedings.  
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1 Homeowners also object to these amounts.

2 Meet and confer sessions and an exchange of incomplete information ensued with  
3 authorized resident representatives, however no settlement or accord could be reached. Thus,  
4 Homeowners timely filed a Petition pursuant to Ordinance sec. 11A-5 (b), contesting the rent  
5 increase and requesting a hearing. The Petition was filed because the sum total of \$161.00  
6 which exceeds the three years' of cumulative CPI increases, far exceeds 75% of the CPI, and is  
7 thus reviewable under the Ordinance. The Ordinance does not require, nor do the County's  
8 "Mobilehome Rent Control Rules for Hearings" mandate, that any particular basis for the  
9 Petition be identified on its face. The County has verified that the Petition was indeed filed by a  
10 homeowner majority, and that it is valid.

## 13 II

### 14 **THE PARK OWNER'S OBJECTIONS TO THE PETITION SHOULD BE OVERRULED**

15 Homeowners desire to confirm their response and opposition to a pre-hearing Brief filed  
16 by the Park Owner which challenged the legality of the Petition. The Park Owner filed a  
17 response to the Homeowners' Petition which sets forth two objections to the Petition. Although  
18 not mentioned at the hearings, Homeowners position remains that each should be denied.

19 The first is rather confusing, but appears to allege that since the \$161.00 sought in  
20 addition to the cumulative annual "75% of CPI adjustment" is not "rent", but has been labeled by  
21 the Park Owner as something else, it is not reviewable. In fact, a portion of the \$161.00 is  
22 requested to be permanent, and thus cannot be anything but base rent in character. It will be  
23 charged monthly for the use of the mobilehome space, and clearly is part of the "noticed  
24 increase" as that phrase is used in Ordinance sec. 11A-5 (a), (b) and (d). Review by a hearing  
25 officer is not limited only to amounts which the Park Owner might choose to label as "base rent",  
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1 but applies also to a review of capital expenses or increased operating expenses which the park  
2 owner might attempt to capitalize and pass through to the residents as a “temporary increase”.  
3 Support for this appears in Ordinance sec. 11A-5 (a) (3), which requires that such amounts be  
4 itemized in the notice of increase (which the Park Owner attempted to do), and again in sec.s (4)-  
5 (6) thereof, which allow the hearing officer to award amounts to cover increased costs of capital  
6 expenses, new or old, or capital improvements. Clearly the items which comprise the \$161.00  
7 are subject to review once a hearing is requested, as here. Otherwise, a Park Owner could “end  
8 run” the Ordinance by calling these increase amounts something else, and realize large increases  
9 in monthly rental charges without any review. It is the entire “increase” which must be  
10 measured, and here the \$161.00 amount is required to be reviewed. Thus, this objection should  
11 be overruled. Since this issue was not raised at hearing, it was presumably waived.  
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14           Additionally, Park Owner appears to challenge whether the Petition was properly signed  
15 by a Homeowner majority. The process of verification is delegated to the County Clerk, who in  
16 this case has not rejected the Petition. Pursuant to Rule 4, the Petition is thus deemed verified.  
17 Absent evidence to the contrary, the Clerk’s finding should control, and the objection be  
18 overruled. Should the hearing officer wish to subpoena the Clerk or review the actual Petition to  
19 verify signatures, Homeowners have no objection. But the word of the Clerk should control, and  
20 Homeowners should not be made to produce at hearing every resident who signed the Petition in  
21 order to verify same. By not raising the issue at hearing, the Park Owner appears to have  
22 conceded this issue.  
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1 III

2 THE PARK OWNER’S REQUEST FOR \$58.14 IN “PERMANENT RENT INCREASES”  
3 IS EXCESSIVE  
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5 1. Ordinance Authority and the Applicability of the Maintenance of Net Operating  
6 Income (MNOI) Formula.

7 Contrary to the Park Owner’s assertion that the Ordinance “provides for rent increases for  
8 increased Park operating expenses” in the dollar-for-dollar fashion which appears on Exhibit  
9 “C”, the Ordinance does not specifically contain such authority. While the Hearing Officer is  
10 given ability in Ordinance sec. 11A-5 (i) to order an amount in excess of one-half of the  
11 automatic increase (i.e. 75% of CPI) to “cover operating expenses”, that section goes on to state  
12 that the Hearing Officer has discretion “to add such amounts as are justified by the evidence...”  
13 Subsection (f) thereof describes a laundry list of factors to be considered (i.e. which “may” be  
14 included), and again refers to “all relevant factors”. An alleged increase in one expenses  
15 category cannot be used to pass through that entire increase in a vacuum, dollar-for-dollar,  
16 without looking at all relevant factors. One such factor is the park owner’s income. While an  
17 increase in an expense item is relevant, it should be considered in a broader context; i.e. within a  
18 fair return formula which takes into account all expenses and income of the park owner. A direct  
19 pass through of a specific expense item is not authorized by the Ordinance; the pass through of a  
20 capital item (of which property taxes and lease payments are not) is allowed (and shall be  
21 discussed below in connection with the “Temporary Increases” which are sought.  
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25 There is no precedent in Fair Return theory or analysis for the kind of passing through of  
26 an expense charge “in total” such as the Park Owner seeks here. The Park Owner’s expert,  
27 Michael St. John, shows tacit agreement with this premise, since he employed with great care  
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1 parallel MNOI calculations referenced in Exhibit “D” which, although not specifically  
2 referenced in the Ordinance, are a well recognized fair return theory adopted by many ordinances  
3 and approved by the Courts. The Maintenance of Net Operating Income (MNOI) analysis has  
4 been praised by commentators for both its fairness and ease of administration, and was approved  
5 by a Court of Appeal in connection with a rent increase hearing in the City of Oceanside. *See*  
6 *Oceanside Mobilehome Park Owner’s Assn. v. City of Oceanside (1984) 157 Cal. App. 3d 887.*  
7 In 1998, in a case involving application of Escondido’s mobilehome ordinance (which, as with  
8 the case of this Ordinance, listed factors to be considered in a fair return case but did not identify  
9 a specific formula or methodology for calculating fair return), the court specifically upheld the  
10 use of an MNOI approach, calling it a “fairly constructed formula” which provides a “just and  
11 reasonable” return on investment. *See Rainbow Disposal v. Mobilehome Park Rental Review*  
12 *Board (1998) 64 Cal. App. 4<sup>th</sup> 1159.*

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15         Ordinance sec. 11A-1 states that as an overriding purpose, the Ordinance is designed to  
16 ensure that a park owner receives “a fair return on their investment”. An inquiry into fair return  
17 is thus appropriate. Any fair return analysis should be fairly used, and MNOI fits the bill. The  
18 fact that the park owner’s own expert has chosen this theory to verify the reasonableness of the  
19 Park Owner’s requested increase amounts establishes that it can and should be used by this  
20 Hearing Officer as an objective and court-tested standard by which the “reasonableness” of the  
21 requested rent increase can be determined. As stated below, the MNOI theory that the park  
22 owner has chosen, and which the Homeowners will accept as the standard to use, must, however,  
23 be properly applied. In that regard, Homeowners have several objections and contentions. But  
24 the overriding importance and use of the MNOI formula in concept cannot be understated, and  
25 Homeowners’ position is this: In connection with the noticed \$58.16 “permanent” rent increase,  
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1 the hearing officer should not consider each of the separate categories labeled as items 1 and 2  
2 on a dollar-for-dollar basis, but instead should include these two expense categories (if  
3 appropriate) in a proper MNOI formula to establish a fair return, and thus a “reasonable” amount  
4 for the rent increase. Both Dr. St. John and Dr. Baar have testified at length about the efficacy  
5 and relevance of this formula, and have jointly validated its use here.  
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## 7 **2. Specific Objections and Contentions Re: Park Owner’s MNOI Calculations**

### 8 A. Property Tax Increase Expense

9 Notwithstanding the foregoing, and the need to recognize this as but one expense which  
10 should be inputted into a proper MNOI formula, the expense amount claimed by the Park Owner  
11 should not be included in the MNOI calculation. The Exhibit “C” page 2 “Notes” attached to  
12 state in footnote “1” that the tax amounts shall not be “passed through” if a challenge to the  
13 assessment is successful (thus admitting that this increase is being attempted as a ‘pass through’  
14 of a non-capital item, rather than included in a proper fair return formula). If there is any chance  
15 that the reassessment was improper, and the increased tax is not even legally owed, then the  
16 legality issue should be sorted out first via an assessment appeal, and no amount should be  
17 allowed until any legal challenge is completed (although it appears that the park owner has not  
18 yet even initiated any such challenge, and indeed stated that it is waiting for the Hearing Officer  
19 to award its projected attorney’s fees first before it would do so!). Clearly the Park Owner’s  
20 request in this regard is inconsistent. On the one hand, it seeks a “permanent increase” for a  
21 property tax increase which it alleges to be wrongful and will purportedly seek to overturn. If  
22 this were to occur, the Park Owner’s own expert admitted that the rent increase stemming  
23 therefrom (i.e. \$25.59 per month) would need to be terminated and any amount paid to date  
24 refunded. The complexity of this scenario, and the limited ability of individual Homeowners to  
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1 track the appeal process and enforce its results to ensure their refunds, highlights the unwieldy  
2 nature of the request. The hearing officer would, as part of any award, be forced to deal with this  
3 contingency, and would have to make this portion conditioned upon certain future events. But  
4 the Park Owner styles this amount as being “permanent”. At the same time, the Park Owner  
5 seeks a \$50,000.00 pass through to pay for the proposed appeal of the permanent tax increase.  
6 The Park Owner cannot have it both ways. Either the increase is “permanent” or it is not.  
7 Because of its contingent nature, and the possible error of the County in making the increased  
8 assessment, this item is premature, and should not be included in the MNOI calculation  
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11 B. Lease Payment Increase

12 As stated above, this item should also be treated as one expense amongst many  
13 which, if allowable, should be inputted into a proper MNOI formula. But this is clearly an  
14 expense which should not be included in Dr. St. John’s analysis. The ground lease payment is  
15 not an operating expense, but rather an investment expense incurred by the Park Owner in  
16 connection with the acquisition of the park, the lease rights or whatever it acquired. It is a  
17 payment from one owner to another, made in connection with the purchased right to control the  
18 land. As such, it is a bargained for part of the purchase price, and not an expense. MNOI  
19 calculations would typically not allow such an item, since it is circular in nature (i.e. an increase  
20 in revenue increases the ground lease payment, which in turn requires an even greater increase in  
21 revenue, and so forth), and thus iterative. A park owner would have no incentive to negotiate a  
22 lower rent amount if it knew that the entire increases could be passed through to its tenants, and  
23 if the park land were someday purchased this amount would go away. Any increase in ground  
24 lease rent, which is thus capable of manipulation much like mortgage interest (which is  
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1 disallowed by the Ordinance) should not be considered as an operating expense when calculating  
2 fair return.

3 Homeowner's expert, Dr. Baar, has extensive experience in connection with the drafting  
4 and interpretation of mobilehome rent ordinances. He strongly opined that this category should  
5 be excluded for each of the above reasons. He testified that where a mobilehome rent ordinance  
6 allows such an expense, the ordinance specifically provides for such, and Exhibit "3" contains  
7 examples of ordinances which do include such a cost. Significantly, the Santa Barbara County  
8 Ordinance is silent on the subject. Dr. St. John testified that ground lease expense has been  
9 allowed "many times" but "not all of the time", and admitted that it is "relatively rare" that this  
10 sort of expense appears at all. He could not recall any specific cases in which he was involved  
11 where such an expense was allowed, or when it was not allowed, or where he ever gave an  
12 opinion that it should be allowed. Apparently this is the first case in which he has so testified.  
13 Absent any such experience, the testimony of Dr. Baar in this regard is more persuasive to  
14 disallow the ground lease expense.  
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18 Again, the circular nature of the ground lease rent formula means that ground rent will  
19 always be increasing, and the fact that it is calculated not as a fixed expense, but as a percentage  
20 of collected rents, means that it will also fluctuate from month to month. The Park Owner could  
21 agree to re-negotiate the amount in order to obtain concessions elsewhere from the land owner,  
22 with the knowledge that any increased amounts can simply be passed through to the  
23 Homeowners. If revenues decrease due to vacancies, the ground lease payment will decrease.  
24 And if the property were ever purchased it would go away completely. The presence of these  
25 contingencies and variables, and the resulting complexity required for building them into any  
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1 conditional award that the hearing officer might need to fashion, compels a finding that this  
2 expense must also be excluded.

3 Even if this expense item is accepted, the calculation is incorrect. According to the  
4 income and expense detail provided by the Park Owner in Exhibit , the actual paid lease amount  
5 in 2008 was \$83,288.42, and not \$54,905.00. Thus, the actual differential between 2008 and  
6 2009 is \$30,238.00. Together with the corrective calculation above, this yields a total difference  
7 between 2008 and 2009 for Permanent Increases of \$68,293.68, which would result in a rent  
8 increase of \$37.94 even if the Park Owner's 'stand alone' theory is accepted.  
9

### 10 **3. Proper Application of the St. John MNOI Analysis**

11 As previously stated, Homeowners do not object to the use of the MNOI formula, and are  
12 willing to accept it as the best fair return formula to be used in this case. But it must be properly  
13 and accurately applied. The Park Owner's expert has presented an MNOI analysis which is  
14 alleged to be a "supporting" or "verifying" calculation for the \$58.16 "permanent" increase. Dr.  
15 St. John has conducted parallel MNOI calculations in Exhibit "D", which find as follows:  
16

#### 17 **Comparing a 1994 Base Year to a 2010 Current Year:**

18 -Indexing at 75%, the increase would be \$44.30.

19 -Indexing at 100%, the increase would be \$57.04.  
20

#### 21 **Comparing a 2007 Base Year to a 2010 Current Year:**

22 -Indexing at 75%, the increase would be \$55.53.

23 -Indexing at 100%, the increase would be \$57.09.  
24

25 Of course these calculations include both items 1 and 2 from above as permissible expenses.  
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1           There are too many combinations that could result from the above for Homeowners to  
2 calculate every conceivable scenario that could result; the final MNOI number will depend upon  
3 a number of factors:  
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5  
6 **Which Base Year should be used?** Dr. St. John admitted that it was “kind of a toss up” as to  
7 whether 1994 or 2007 should be used, and admitted that his first choice was 1994 based upon the  
8 most historical documentation then available. He only employed the “side-by-side” use of the  
9 2007 calculation after reading Homeowners’ pre-hearing brief. Based upon the testimony of Dr.  
10 Baar, Dr. St. John’s first instinct would appear to be the more correct one. Dr. Baar recalled how  
11 in prior matters in which he has viewed Dr. St. John’s testimony, he has always taken the  
12 position that the base year should precede the adoption date of the ordinance. Since 1994 is the  
13 oldest available data, it would follow that 1994 should become the base year for purposes of this  
14 hearing. Dr. Baar agreed with this.  
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17 **What indexing should be used?** Both experts agreed that it is common for ordinances to  
18 provide for indexing at 75% of CPI when employing an MNOI analysis. Exhibit 2 evidences  
19 this to be true. Because the Santa Barbara ordinance indexes the annual adjustment at 75% of  
20 CPI, it follows that a 75% index should be used when applying MNOI.  
21

22           Thus, the most accurate MNOI application is the one calculated using a base year of 1994  
23 @ 75% indexing; i.e. \$44.30 according to page 4 of Table 3-B in Exhibit D. This needs to be  
24 compared to the \$58.16 increase sought based upon the stand alone “dollar-for-dollar”  
25 calculation, which is thus not an accurate fair return number. MNOI application establishes the  
26 unreasonableness of the \$58.16 amount, even before any expense items are deducted.  
27

28           From this \$44.30 amount, certain expense adjustments must also be made:

1 -When the property tax expense is removed (see above), the MNOI result is near zero.

2 -When the ground lease expense is removed ( see above), the MNOI result is near zero.

3 -Dr. St. John admitted during the hearing that a \$2,500.00 expense item for Franchise Taxes was  
4 pre-paid for 2011, and thus should be deducted from the 2010 expenses. This results in an  
5 undisputed \$1.39 deduction from the \$44.30 figure above, even if all other expenses remain  
6 included.  
7

8 -Dr. St. John also identified a \$4,500.00 late charge that was incurred in connection with a bank  
9 payment. Although he felt that this expense should still be included, it is clear that it should not  
10 be, since it is a one-time, non-recurring expense which was within the Park Owner's power to  
11 avoid. Deducting this amount from the \$44.30 figure, even if all other expenses remain  
12 included, results in a further \$2.51 reduction.  
13

14 Thus, even if expense items 1 and 2 are included, the correct MNOI total would be  
15 \$40.40. This is the largest possible permanent rent increase that should be awarded, subject to  
16 further reduction for the exclusion of property tax and/or ground lease expense. (Homeowners  
17 will not perform those calculations here, but reserve the right to do so in their closing brief.)  
18  
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#### 20 IV

### 21 **THE PARK OWNER'S ATTEMPT TO PASS THROUGH \$102.84 IN "TEMPORARY** 22 **INCREASES" SHOULD BE DENIED IN ITS ENTIRETY** 23

24 Homeowners object to the increase amounts labeled as "Temporary Increases" in the  
25 Park Owner's increase summary sheet (Items labeled as 3 through 6) based upon the following:  
26

#### 27 **1. General Objections and Observations**

28 Each of the items described in this section is sought as a "pass through"; i.e. the amount

1 requested is designed to be amortized over a seven (7) years, at nine (9) percent interest, to  
2 reimburse the Park Owner for the cost of the item. This constitutes treatment of each as a capital  
3 item, rather than a deductible expense. But to be treated as a capital item, in this case for the  
4 most part where payment is sought before the expenses have actually been incurred, the  
5 following must be true:  
6

7 -The improvement or repair for which the increase is sought must be specifically identified, so as  
8 to confirm that it is indeed a capital item, as opposed to a deductible expense.

9 -Ordinance definitions of a “capital improvement” and a “capital expense” must be met in order  
10 to authorize the increase; i.e. the “addition or betterment” must be identified, or the “existing  
11 facilities or improvements” for which the expected repair or replacement adds an expected life of  
12 at least one year. Until the specific work is identified by type and cost, these definitions, found  
13 in Ordinance sec. 11A-2, cannot be established.  
14

15 -“Anticipated Professional Fees”, including legal fees, which are claimed as capital items in  
16 items 3, 5 and 6 need to be specifically explained and accounted for, as well as supported by  
17 good faith estimates or billings incurred. Such items are not considered as capital expenditures,  
18 and thus cannot be amortized and passed through, where their inclusion would violate Internal  
19 Revenue Service precedent. In Revenue Ruling 78-389 (1978-2 Cum. Bull. 125), the Service  
20 found that legal expenses incurred in the prosecution of a suit to invalidate as municipal  
21 ordinance that would prohibit the operation of a taxpayer’s business were deductible as ordinary  
22 and necessary business expenses when they arose from the taxpayer’s business activities and did  
23 not result in the acquisition or disposition of a capital asset. Thus, in general, these sought after  
24 “professional fees” cannot be treated as capital items. Park Owner’s expert admits that he has  
25 treated each such fee request the same as a capital item, based upon his belief that the Ordinance  
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1 authorizes him to do so by analogy. But there is no precedent or authority stated for this,  
2 whether from the Ordinance language or elsewhere. These are clearly non-capital in nature, and  
3 regardless of their amount should not be allowed.

4  
5 The manner of amortizing each of the principal amounts, together with interest at 9%,  
6 over 7 years is the product of an estimate made by Dr. St. John. However he testified at length  
7 during the hearing about the hardship upon the residents that a shorter amortization period could  
8 create, and stated that he would have “no objection to a 15-year amortization”. In this regard, in  
9 the event that any of the “temporary” increase amounts are allowed, it is submitted that the  
10 hearing officer should construct a parallel calculation which amortizes the amount at both 7 and  
11 15 years, so that each resident can choose the option that best suits their financial capabilities.  
12 This is particularly appropriate when amortizing road repair expenses, which are typically  
13 amortized over a longer period of time.  
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## 16 17 **2. Specific Objections and Challenges**

### 18 Item 3: Capital Improvements

19 Item 3 of Exhibit 3 is labeled as “capital improvements”, which means that the definition  
20 found in Ordinance sec. 11A-2 (a) must be established. It is unclear how or why \$50,000.00 of  
21 “professional fees” would be required in connection with any proposed capital improvement,  
22 especially since architectural and engineering costs have already been broken out separately.  
23 Nor should they be allowed based upon the IRS authority cited above. This amount should  
24 therefore be disallowed.  
25

26 With respect to the claimed \$90,000.00 of “A & E” fees already incurred, the actual  
27 amount would appear to be \$62,145.55 as verified by Exhibit “J”. Expense items listed on  
28



1 Exhibit “J” which were incurred by the previous park operator, Nomad Village, Inc., are not  
2 subject to reimbursement to the current.

3 In addition, any portion of this remaining amount that relates to repairs, maintenance,  
4 upgrades or replacement of the sub-metered gas or electric system may not be passed through to  
5 Homeowners, pursuant to the authority of the case of *Rainbow Disposal Company, Inc. v.*  
6 *Escondido Mobilehome Rent Review Board* 64 Cal. App. 4<sup>th</sup> 1159 (1998) marked as Exhibit “4”  
7 during the hearing. In that case, a \$200,000.00 amount was disallowed, based upon the authority  
8 of a 1995 Public Utilities Commission Ruling (*Re: Rates, Charges, and Practices of Electric and*  
9 *Gas Utilities Providing Services to Master-metered Mobile Home Parks* (1995) 58 Cal. P.U.C.  
10 *2d 709*). In that decision, the Commission found that the sub-metered discount received by park  
11 owners each month to compensate them for operating sub-metered systems includes “among  
12 other things, a factor for investment-related expenses for all initial and ongoing capital upgrade  
13 costs, and return on investment.” During the hearing, Dr. St. John opined that costs related to  
14 system upgrades should not be disallowed, since the discount in his opinion only covers repairs  
15 or maintenance. Dr. St. John’s resume gives no indication that he has any expertise in utility  
16 matters, or that he has consulted in connection therewith. In fact, he admitted that, consistent  
17 with the *Rainbow* decision, all income and expenses related to sub-metered utility systems are  
18 typically excluded from an MNOI calculation. Clearly his opinion is directly contrary to both  
19 California caselaw and Commission decision. Since expenses related to electric system upgrades  
20 cannot be charged in a rent control jurisdiction, and such expenses found in this category must  
21 also be excluded. Other than the first three entries which appear on Exhibit “J” relating to fence  
22 repairs, and the sewer repair cost, all other expenses listed appear to bear some relationship to  
23 electrical system upgrades, including the \$20,760.00 paid to Cusac Construction. For the above-  
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1 stated reasons, they cannot be passed through to Homeowners, and must be deleted from this  
2 category. The total pass through amount appears to be \$22,192.50 for “A & E Fees” already  
3 incurred.

4  
5 The \$320,000.00 amount listed for future “Infrastructure” amounts is not identified. In  
6 fact, the Park Owner testified that they were not yet sure what they were going to spend this  
7 amount on. Until verifiable items are identified, so as to be confirmed as capital items that will  
8 benefit the Homeowners, nothing can be passed through. Otherwise, there is no way for  
9 Homeowners to verify if the designated work is being timely performed. As well, Exhibit M  
10 identifies an estimate for \$270,945.00 to upgrade the electrical system, which cannot be passed  
11 through pursuant to the authority stated above. The Park Owner testified that this work would be  
12 done first, before any street repairs could be accomplished. Since it is unlikely that both could  
13 be completed within 6 months, with the rainy season fast approaching, and the \$320,000 amount  
14 does not match any of the larger street repair estimates submitted as a part of Exhibit “M”, this  
15 entire, unquantified and vague amount must be denied. At minimum, it is premature.

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19 Item 4: Regulatory Lag Amounts

20 This can only be described as a very creative category, and suffers from some of the same  
21 infirmities as Items 1 and 2. For if a property tax appeal is successful, and the amounts  
22 previously paid to the County are refunded, a commensurate refund would be due to  
23 Homeowners. And if ground lease expenses are disallowed for the reasons set forth above, they  
24 cannot be allowed to be charged here.

25  
26 But the biggest problem with this category goes to its basic concept. Dr. St. John  
27 admitted that he could cite no specific precedent for going back in time some 33 months (33 is  
28

1 the correct total, not 34) to recapture expenses that the Park Owner never elected to bill to the  
2 residents sooner. The result is unfair; i.e. residents are hit with a cumulative sum all at once,  
3 now including interest, of which they had no prior knowledge. Dr. Baar testified that no more  
4 than 12 months of this “lag” should be charged to the Homeowners.  
5

6 If any amount is charged, then it must be based on 33 months instead of 34, resulting in a  
7 .75 cent reduction from the \$32.74 amount being sought. The calculation presented for this item  
8 4 incorrectly counts for 34 months, when instead the number of months from August, 2008,  
9 when Park Owner acquired the lease rights, through April, 2011 (i.e. the last month before the  
10 requested increase would take effect) is 33 months.  
11

12 This category attempts to pass through retroactively, supplemental tax and land lease  
13 allegedly incurred in 2008 and 2009, and for which the park owner chose not to previously seek  
14 any increase during those years. There is no precedent in the Ordinance for such a theory, which  
15 if allowed would enable a park owner to go back in time any number of years to allege that an  
16 expense increase, or one-time payment of some type, had not been fully compensated. These are  
17 not capital items, and are subject to the same analysis set forth in Headnote III above. These  
18 amounts are compensated as a part of the three years of automatic CPI increases which will be  
19 allowed by the Hearing Officer. They were never noticed when incurred, and recovery was  
20 never sought when the expense was incurred. To allow them now would create a precedent for  
21 retroactive recovery which would make such expenses difficult to track or prove, and which  
22 would keep Homeowners at risk of having to pay rent increases to cover new expense item  
23 whenever discovered, or whenever the park owner might get around to requesting them. This  
24 would also create chaos and play havoc with prior increases ordered based upon facts and data  
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1 then presented, which could be turned on its head by new “expenses” claimed in later years for  
2 the same periods.

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5 Item 5: Anticipated Professional Fees – Property Taxes

6 This is clearly not a capital item, since it does not relate to the acquisition or disposition  
7 of a capital asset, and because it is prospective as per its definition it has not yet become an  
8 expense of the Park Owner. If actually incurred, the Park Owner is free to include this amount in  
9 a future rent notice, where it can be properly analyzed and adjudicated under the Ordinance.  
10 Furthermore, no basis for the expense has been disclosed; i.e. it is unknown who the fees would  
11 be paid to, what they would seek to accomplish and what good faith basis, if any, exists for  
12 achieving any benefit to the Homeowners. The fact that the Park Owner has not, to date,  
13 initiated any such challenge speaks volumes about the confidence level in such a pursuit, and  
14 how Homeowners would in any way be “bettered” by such a cost. Homeowners cannot be  
15 expected to fund what could turn out to be fruitless legal challenges, and provide the Park Owner  
16 with the equivalent of an attorney’s fee guarantee, even if the Park Owner were to lose.

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19 During hearing, the park owner admitted that to date, no actual steps have been  
20 undertaken in furtherance of the appeal. According to the website maintained by the County of  
21 Santa Barbara, which has posted the Rules of the Assessment Appeals Board, any appeal must be  
22 filed no later than November 30<sup>th</sup> of the current year for “regular” assessments, and within 60  
23 days after notification for “supplemental” assessments. Because Exhibit “G” confirms  
24 notification to the Park Owner on May 20, 2009, and the Park’s records show the supplemental  
25 taxes paid in full by early 2010, the time for filing any appeal would appear to be long gone. As  
26 such, this category cannot be allowed.  
27  
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1                    Item 6: Anticipated Professional Fees – Rent Increase

2                    This category still represents a complete unknown at this point. But it can be inferred,  
3 due to the huge amount projected that it encompasses not only the legal fees require for this 2  
4 day hearing, but also fees to fund a projected appeal through the courts if the Park Owner were to  
5 lose all or any portion of its case at the administrative level, as well as for any remanded  
6 hearings. For that reason, all of the same arguments set forth in item 5 above would apply to this  
7 item. Any fees incurred for appeals or remand can be awarded on remand. But they cannot be  
8 claimed before any such expenses are incurred, as they are not capital items capable of being  
9 monitored during the six-month period described in the Ordinance. Treating this item the same  
10 as a capital item by analogy simply does not work.  
11

12                    During his testimony, Dr. St. John could not estimate what fees he would charge through  
13 the hearing process. Nor were any other billings entered into evidence to support attorney’s fees  
14 (Counsel for Park Owner has agreed to provide same with his opening brief). This is still thus an  
15 unknown, for which Homeowners will reserve comment in their closing brief. But Dr. Baar  
16 testified very clearly that \$125,000.00 was a hugely excessive amount for fees in a hearing such  
17 as this, and Exhibit 5 shows that fees of less than \$50,000.00 would be routine in a hearing such  
18 as this. Homeowners reserve the right to argue this item further once counsel’s actual, itemized  
19 fees are received.  
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23                    **V**

24                    **CONCLUSION**

25                    Only the CPI portion of the increase is deemed “automatic” based upon evidence or  
26 authority presented thus far by the park owner. All other portions of the requested increase; i.e.  
27 the \$161.00 amount, must be reviewed by the Hearing Officer before they can become an  
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1 ongoing part of the monthly rental cost, whether as base rent or a pass through. Homeowners  
2 objections to the amounts sought are based not only upon methodology, but also upon errors and  
3 inconsistencies in the calculations themselves. Homeowners cannot at this point even begin to  
4 calculate all of the different amounts which might be awarded if only certain mistakes are  
5 corrected or certain re-calculations are made. But they need not do so in any case, for the bottom  
6 line is this: If the mutually accepted MNOI formula is properly applied, with the ground lease or  
7 property tax cost extracted, the amount to be granted for the “permanent” base year rent increase  
8 above and beyond what is automatically allowed is “zero”. And if the “temporary increases” are  
9 confined to legitimate capital items which have been properly identified and estimated by  
10 reasonable cost, then the allowable amount of any such pass throughs is also at or near “zero”.

13 For these reasons, and reserving the right to make additional arguments in their closing  
14 brief, Homeowners respectfully request that the Petition be granted and the \$161.00 requested  
15 increase be denied.

18 Dated: October 19, 2011

  
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BRUCE E. STANTON, Esq.  
Attorney for Homeowners